

REMARKS/ARGUMENTS

Claims 1 to 7 and 9 to 29 remain in this application. Claim 8 has been canceled to comply with an earlier restriction requirement. Claims 64 to 73 have been added and include no new matter.

The Examiner objects to the misspelling of the word "antibody" in the specification of the present case. Applicant has amended the specification to correct the misspelled word thereby obviating the Examiner's rejection.

The Examiner rejects the pending claims as failing to comply with the written description requirement under 35 USC 112, first paragraph, stating that the specification fails to describe a nucleotide sequence that can produce a polypeptide which can bind selectively to any antigen/immunoglobulin polypeptide as claimed by the applicant. Applicant traverses the rejection.

Applicant submits that the present case is not analogous to the case law cited by the Examiner. For example, in *Fiers v. Revel*, 25USPQ2d 1601, 1606, *Amgen v. Chugai*, 18 USPQ2d 1016 and *Fiddes v. Baird*, 30 USPQ2d 1481, 1483 specific amino acid and/or nucleotide sequences that were unknown were at issue. In addition, and importantly, each of these three cases were directed to compositions.

The claims in the present case are directed to methods of producing compositions, i.e., immunoglobulins or antibodies. Many sequences for immunoglobulin polypeptides and their corresponding nucleotide sequences were readily available to a practitioner of ordinary skill in the field at the time of filing the present application. There is no need to isolate or characterize nucleotide or amino acid sequences to practice the invention as claimed in the present case. For example, WO 01/14424 includes the nucleotide sequence of human CTLA4 antibodies and is incorporated in the present application in its entirety by reference. See the specification, page 71, lines 17 and 18. The present claims are directed to methods of producing immunoglobulins or antibodies. These methods may be applied to nucleotide sequences which encode immunoglobulins or antibodies known at the time of filing. Therefore, applicant submits that the pending claims in the present case comply with the written description requirement under 35 USC 112, first paragraph.

The Examiner rejects Claim 1 under 35 USC 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner rejects the claim based on the use of the term "cognate." The Examiner also states that it is unclear how the binding of an antibody combined with a cognate light or heavy chain would result in the production of a heterologous antibody. Applicant traverses the rejection. However, applicant has amended claim 1 to delete "cognate." Applicant has also amended claim 1 to make clear how combining a light or heavy chain would result in the production of a heterologous antibody.

The Examiner rejects claims 1, 2, 4 to 9, 11, 12, 14 to 17, 20 to 29, 62 and 63 under 35 USC 102(a) as being anticipated by Ditullio et al. (WO 00/75300 A2). Applicant traverses the rejection.

Ditullio et al does not disclose or even suggest the present invention. Ditullio et al may disclose introducing nucleic acid in to an avian blastodermal cell. However, the pending claims in the present case do not include introducing nucleic acid into an avian blastodermal cell. Therefore, applicant submits that the present rejection should be withdrawn.

The Examiner rejects claims 1, 3, 10 and 13 under 35 USC 103(a) as being obvious over Ditullio et al when taken with Michael et al (U.S. Patent No. 6,143,559). Applicant traverses this rejection.

The Examiner states that he recognizes that obviousness can only be established where there is some teaching, suggestion or motivation to combine or modify the teaching found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art citing to *in re Fine* 837 F.2d 1071 and *In re Jones* 958 F.2d 347. In *In re Fine*, the court found that there was no support or explanation for the Examiner's and the Board's assertion that it would have been within the skill of the art to make the alleged obvious substitution and reversed the decision of obviousness. Similarly, in the present case, the Examiner provides no support or explanation for a motivation to combine the teachings or modify (i.e., extend) the teachings.

The Examiner states that it would have been obvious for one of skill in the art to extend the teaching of Michael to express in an avian cell constructs of the present invention because the cytomegaloviral promoter is well-known and well characterized promoter that would allow for optimal levels and patterns of gene expression, that an IRES element would facilitate expression of multiple genes and that viral transduction is an efficient way to deliver a construct to the cell. It may be true that the cytomegaloviral promoter is well-known and well characterized promoter that would allow for optimal levels and patterns of gene expression, that an IRES element would facilitate expression of multiple genes and that viral transduction is an efficient way to deliver a construct to the cell. However, the Examiner does not point to a source or provide an explanation where the motivation to combine the references comes from in the knowledge generally available to a practitioner of ordinary skill. Therefore, the present obviousness rejection should be withdrawn

To establish a *Prima facie* case of obviousness, the cited references must provide all of the claim limitations necessary to arrive at the claimed invention. This requirement is not met in the present case. For example, the present claims relate to the culturing of a fibroblast, oviduct, embryonic, germ-line, ovum, or testicular avian cell. In addition, the present claims relate to the culturing of a fibroblast, oviduct, embryonic, germ-line, ovum, or testicular avian cell transfected with at least one expression vector.

Clearly, each of these features of the currently pending claims are not present in the cited references and, therefore, the obviousness rejection should be withdrawn.

New claims 64 to 73 relate to methods of producing an antibody which is specific for CTLA4 in an avian cell. Applicant submits that the new claims comply with the statutory requirements for patentability for reasons which include those given above for patentability relating to the presently rejected claims. In addition, the new claims include additional features which further distinguish the claims over the prior art and provide additional written description and claim clarity.

In conclusion, applicant has shown that the present claims are not anticipated by and are unobvious from and patentable over the prior art under 35 USC 102 and 103. In addition, applicant has shown that requirements under 35 USC 112 have been satisfied. Therefore, applicant submits that the presently pending claims are allowable and respectfully requests the Examiner to pass the above-identified application to allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kyle Yesland', is written over the typed name.

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